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NEW DELHI WEDNESDAY 30, 1952

ELECTION TRIBUNAL, ALIPORE

NOTIFICATION

The 26th July 1952

No. 45-E.T.—In pursuance of the provisions of sub-section (1) of section 90 of the Representation of the People Act, 1951 (XLIII of 1951), the following election petition presented under section 81 thereof is published for information.

Dated the 26th July, 1952.

S. C. RAY CHAUDHURI,
Chairman, Election Tribunal.

Election Petition No. 151 of 1952.

Presented to me by the petitioner Baddrudduja Syed in person this the eighteenth day of April 1952.

P. N. KRISHNAMANI. Asstt. Secy.,
Election Commission, India.

To

The Election Commission, India,
New Delhi.

In the matter of an Election Petition under Section 81 of the Representation of People Act 1951 (Act No. XLIII of 1951)

AND

In the matter of the Constitution of India

AND

In the matter of the Representation of the People Act, 1950 (Act XLIII of 1950) and the Rules made thereunder

AND

In the matter of the Representation of the People (Amendment) Act, 1950 (Act LXXIII of 1950)

AND

In the matter of Delimitation of Parliamentary and Assembly Constituencies (West Bengal) Order, 1951

AND

In the matter of the Representation of the People Act, 1951 (Act XLIII of 1951) and the Rules and Orders made thereunder

(1819)

AND

In the matter of BADDRUDDUJA SYED residing at No. 19, European Asylum Lane, in the town of Calcutta.....Petitioner

Versus

1. MOHAMMAD KHODA BUKSH, Village—Barua, P.O. Beldanga, District—Murshidabad.
2. DHIRENDRA NATH RAI, Dhulyan, P.O. Dhulyan, District—Murshidabad.
3. DWIJAPADA SARKAR, Jaiganj, P.O. Jaiganj, District—Murshidabad.

Respondents.

The humble petition of BADDRUDDUJA SYED *alias* SYED BADDRUDDOJA son of Abdul Gafur Syed of 19, European Asylum Lane, Police Station—Taltolla by caste Mohammadan, Calcutta.

Respectfully Sheweth,

1. Your petitioner was a candidate for election to fill a seat in the House of People from the Parliamentary Constituency of Murshidabad in the State of West Bengal. Your petitioner was at all material times and still is duly qualified to be chosen to fill the said seat under the provisions of the Constitution of India and the said Representation of the People Act, 1951 (Act XLIII of 1951) (hereinafter called "the said Act") and was duly nominated as a candidate for the said election by two several nomination papers duly filled in and completed and duly presented to the Returning Officer. In accordance with the said Act and the Rules thereunder as referred to hereinafter.

2. Your petitioner is an elector duly recorded as Voter being Serial No. 550 in the Final Electoral Roll for Calcutta South-East Parliamentary Constituency (No. 19, European Asylum Lane—Part A—Original Roll) of the House of the People for the First General Election and is in no way disqualified from standing as a candidate for election to the House of the People. Your petitioner is also an elector duly recorded as Elector or Voter, being Serial No. 550 in the Final Electoral Roll for Taltola Assembly Constituency (No. 19, European Asylum Lane—Part A—Original Roll) in Calcutta of the West Bengal Legislative Assembly, which Constituency is an electoral unit of the aforesaid South-East Calcutta Parliamentary Constituency. Copies of the relevant entries in the said Rolls are set forth in Annexure "E" hereto.

3. The aforesaid Electoral Rolls for the House of the People as well as for the West Bengal Legislative Assembly were prepared and published combinedly and correspond to one another, under the Representation of the People (Preparation of Electoral Rolls) Rules, 1950, hereinafter called the Electoral Rules of 1950.

4. On the 17th day of November, 1951, your petitioner presented two nomination papers in respect of his candidature for election to the House of the People from the said Murshidabad Constituency, at the office of the Returning Officer, Mr. J. Talukdar, when the said papers were numbered with serial numbers 3 and 4. Copies of the said nomination papers are set forth in Annexure "B" hereto.

5. On the 21st day of November, 1951 and later Mr. J. Talukdar, the District Magistrate of Murshidabad, held the public statutory office of the Returning Officer for the Parliamentary Constituency of Murshidabad in the State of West Bengal under the Representation of the People Act, 1951 (Act XLIII of 1951), hereinafter referred to as the Act of 1951, in the First General Election of members to the House of the People of the Parliament of India under the Constitution of India and is called the Returning Officer hereinafter. The said office was and has been held at all material times by Mr. J. Talukdar. The said Returning Officer had diverse Statutory duties under the said Act of 1951 as well as the Representation of the People (Conduct of Elections and Election Petition) Rules, 1951, hereinafter called the Election Rules of 1951. Such duties of the said Returning Officer included the duty of receiving and examining nomination papers of candidates for election from the said Constituency on presentation of the said papers and of holding scrutiny of the said papers and of declaring the names of candidates who were validly nominated for the said election. In the said intended First General Election only one member was to be elected to the single general seat in the House of the People from the said Constituency.

6. The Entries Nos. 7 and 8 of both of your petitioner's aforesaid nomination papers were filled in as follows:—

"7. Constituency in the Electoral Roll of which the name of the candidate is included.....

Taltola (Constituency) Calcutta, of the West Bengal Legislative Assembly.

8. Serial number of the candidate in the electoral roll of the Constituency in which his name is included.....

550 in original roll, Part A, 19, European Asylum Lane, Calcutta, in the Final Electoral Roll for Taltolla Assembly Constituency, Volume—I."

7. On or about the 6th day of November, 1951, your petitioner applied to the Electoral Registration Officer, Calcutta, for three certified copies of his name and number in Taltolla (Ward No. 14) Constituency in the Parliamentary Electoral Roll as well as in the State Assembly Electoral Roll wherein his name has been entered as a voter; whereupon he was supplied with three certified copies all of which later transpired to be certified copies of such entry in the Taltolla Assembly Electoral Roll only but identical with the entry in the South-East Calcutta Parliamentary Electoral Roll in all material particulars.

8. Your petitioner in person presented his aforesaid nomination papers on the 17th day of November, 1951, at the office of the said Returning Officer, when the said papers were received by the Additional District Magistrate, Mr. Debabrata Mullick, for and on behalf of the said Returning Officer. The said Additional District Magistrate also received in like manner several other nomination papers of diverse other candidates in the said Constituency. On receiving the said nomination papers of your petitioner, the said Additional District Magistrate numbered them serially and after going through them expressed his satisfaction that they were in order and did not require your petitioner presenting the nomination papers as aforesaid to produce either any copy of the Electoral Roll wherein the name of your petitioner is included or any certified copy of the relevant entries in such Electoral Roll.

9. The aforesaid Respondents Nos. 1, 2 and 3 also filed their nomination papers at the office of the said Returning Officer, for election to the single seat in the House of the People from the said Murshidabad Constituency. The Respondents Nos. 1, 2 and 3 are hereinafter called the Respondent candidates.

10. The Returning Officer held the scrutiny of all nomination papers filed in respect of the election of one member to the House of the People from the said Murshidabad Parliamentary Constituency on the 21st day of November, 1951, and heard the objections to the said nominations. The Returning Officer ultimately declared the nominations of the Respondent candidates as valid, but unlawfully, illegally and *mala fide* rejected the nomination papers of your petitioner on the ground that the alleged defects in the said papers were substantial in character and might not be condoned under Section 36(4) of the Act of 1951, and this he did without giving your petitioner any opportunity to rebut the objection. A copy of the judgment and order of the Returning Officer in this behalf is set forth in Annexure "C" hereto. (The certified copy of the judgment or order of the said Returning Officer is with the Hon'ble High Court and will be produced later).

11. Your petitioner states that neither the identity of your petitioner nor your petitioner's Serial Number nor the Assembly Constituency in which he is included as a Voter was disputed at the said scrutiny.

12. In the facts and circumstances of the case as well as in law it was incumbent upon the Returning Officer to accept your petitioner's said nomination papers as valid and to declare your petitioner as a validly nominated candidate for election from the said Constituency of Murshidabad. A copy of the Press Note issued by the Election Commission is set forth in Annexure "D" hereto and is relevant.

13. On the 24th day of November, 1951, the Returning Officer published the list of valid nominations wherein he included the names of the Respondent candidates, but wherefrom he unlawfully, illegally and *mala fide* excluded your petitioner's name and thereby denied him justice.

14. Your petitioner's right to contest the said election of the member to the House of the People from the said Murshidabad Parliamentary Constituency was thus illegally denied at the instance of Respondents more specially by Respondent No. 1.

15. Against the aforesaid orders of the Returning Officer passed in collusion with Respondent No. 1 who was a Congress candidate and the Additional District Magistrate Sri Debobrata Mullick rejecting petitioner's nomination papers, the petitioner moved the Hon'ble High Court at Calcutta and obtained Civil Rule No. 2994 of 1951 under Article 226 of the Constitution of India from the Hon'ble High Court at Calcutta upon the Returning Officer to show cause *inter alia* why he should not declare nomination papers of your petitioner as valid. The said Rule was however discharged ultimately on the 18th day of December, 1951, on grounds of want of jurisdiction of the said Hon'ble High Court. The relevant judgment of the Hon'ble High Court covering also Civil Suit No. 2994 of 1951 referred to above has since been reported in Calcutta Weekly Notes.

Volume 56, Page 113. (Certified copies submitted marked Annexure "F".)

16. Respondent No. 1 was declared elected in the Gazette of India, dated 14th February, 1952, to the House of People in the election that was held from the 8th of January to 19th January, 1952.

17. The notice for the return of Election Expenses lodged by the Respondent No. 1 was published in the Gazette of India, dated April 5, 1952.

18. The Returning Officer in collusion with the Additional Respondent No. 1, the Congress candidate and the Additional District Magistrate Sri Debobrata Mullick illegally and *mala fide* rejected the nomination papers of your petitioner.

19. Your petitioner along with his representative Sri Nagendra Kumar Bhattacharya, Advocate, Berhampore, in the District of Murshidabad were present at the time of scrutiny and urged before the Returning Officer who was being at that material time assisted by the Additional District Magistrate Sri Debobrata Mullick that the petitioner was a recorded voter in the Parliamentary Constituency of South-East Calcutta of which the Taltola Assembly Constituency is an electoral unit and submitted further that the identity of the petitioner was beyond question in as much as the name, Serial No., father's name, age and address of the petitioner in the aforesaid Parliamentary Constituency and in the Taltola Assembly Constituency were identical and corresponding. The Returning Officer at the instance of Respondent No. 1 and on the inducement of the Additional District Magistrate Sri Debobrata Mullick then and there delivered his orders rejecting petitioner's nomination papers though the petitioner and his said representative had persistently emphasised that the petitioner was a recorded elector in the South-East Calcutta Parliamentary Constituency—a fact which could be so easily verified from the Electoral Roll of the Parliamentary Constituencies in the Returning Officer's possession at the time of scrutiny to which both the petitioner and the said representative had repeatedly drawn special attention of the said Returning Officer. Moreover, at the instance of Respondent No. 1 and on the inducement of the aforesaid Additional District Magistrate Sri Debobrata Mullick, the Returning Officer did not allow the petitioner a reasonable opportunity to produce before him a certified copy of the Electoral Roll showing that petitioner was an elector enrolled in the South-East Calcutta Parliamentary Constituency in which the Taltola Assembly Constituency is contained.

20. In fact the illegal rejection of this petitioner's nomination papers at the instance of Respondent No. 1, the Congress candidate, deprived the petitioner of the opportunity of seeking election to the House of the People from the said Constituency of Murshidabad and petitioner's removal gave the Respondent No. 1 an easy walk over to the House of People in the election, as this petitioner was the only candidate who would have defeated the Respondent No. 1.

21. In fact this petitioner's nomination papers were valid and proper and the grounds for its rejection were no grounds at all or were such technical grounds as could not be the basis for rejecting any nomination papers including those of the petitioner.

22. In fact petitioner submitted valid and proper nomination papers and was illegally and *mala fide* prevented by the Respondent No. 1 in collusion with the said Returning Officer and the said Additional District Magistrate Sri Debobrata Mullick from seeking election to the House of the People from the said Parliamentary Constituency of Murshidabad.

23. The election in the said Parliamentary Constituency of Murshidabad was void in as much as it had been held without the petitioner being declared a validly nominated candidate in spite of petitioner's valid nomination papers.

24. Your petitioner is entitled to a declaration that he submitted valid nomination papers for his election to the said Parliamentary Constituency of Murshidabad, that the rejection of his nomination papers was illegal and unwarranted by law and that he in fact was a validly nominated candidate.

25. Your petitioner annexes hereto marked "A" the relevant receipt showing a deposit of Rupees One Thousand in the Reserve Bank of India in favour of the Secretary to the Election Commission as security for the cost of this petition.

26. Your petitioner submits that in the premises the said election is wholly void and/or that the election of the Respondent No. 1 is void.

Your petitioner therefore humbly prays—

- (a) A declaration that the election referred to in this petition is wholly void and/or that the election of the Respondent No. 1 herein as the returned candidate is void.
- (b) Any other or further order or orders or direction or directions as may be deemed fit and proper.

Baddrudduja Syed,
17-4-52.

Verification

I BADDRUDDOJA SYED, declare that statements contained in the cause-title and in paragraphs 1 to 26 (both inclusive) of the foregoing petition are true to my knowledge and in pursuance whereof I sight his verification in the Bar Association in the premises of the Chief Presidency Magistrate's Court, Calcutta, at the hour of 1 P.M. on this the Seventeenth day of the month of April, in the year One Thousand Nine Hundred and Fifty-two of Lord Christ.

Baddrudduja Syed,
(Signature of the Petitioner).

Signed in my presence,
(Sd) S. H. Imam.

Pleader,
89/1, Ripon Street,

Calcutta-16.

Drafted by me

(Sd.) S. H. Imam,
Pleader,

89/1, Ripon Street,
Calcutta-16.

New Delhi, the 28th July, 1952

No. 19/142/52-Elec.III.—Whereas the elections of the persons named in column 1 of the Schedule below, as members of the House of the People from the constituencies specified in the corresponding entries in column 3 thereof, have been called in question by election petitions duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by the persons whose names and addresses are given in the corresponding entries in column 2 of the said Schedule;

Now, therefore, in exercise of the powers conferred by sections 86 and 88 of the said Act, the Election Commission hereby appoints Shri Kamala Sahai, District Judge, Bhagalpur, to be the Chairman of each of the election tribunals for the trial of the said petitions, and further appoints Bhagalpur as the place where the trial of each petition shall be held.

SCHEDULE

Name of the person whose election has been called in question	Name and address of the person by whom the election petition has been presented	Constituency
1	2	3
Shri Kirai Mushar and Shri Anup Lal Mehta	Shri Mahabir Das S/o Late Darbari Das, Lalooohak, Thana Mojahidpur, Town Bhagalpur, P.O. Mirjanhat, District Bhagalpur (Bihar)	Bhagalpur-Cum-Purnea.
Shri Suresh Chandra Mishra	Shri Rajendra Prasad Yadav, Village Raghunathpur, P.O. Saheb Kamal, P.S. Ballia, District Monghyr	Monghyr North-East.

No. 19/161/52-Elec.III.—Whereas the election of Shri Har Shankar Prasad, as a member of the House of the People from the Gorakhpur District (North) Constituency, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Shibban Lal Saksena, House No. 10, Mohalla Allahdadpur, Gorakhpur City;

Now, therefore, in pursuance of the provisions of sections 86 and 88 of the said Act, the Election Commission hereby appoints Shri Brij Narayan, District Judge, Gorakhpur, to be the Chairman of the election tribunal so constituted for the trial of the said petition and further appoints Gorakhpur as the place where the trial of the petition shall be held.

No. 19/198/52-Elec.III.—Whereas the elections of the persons named in column 1 of the Schedule below, as members of the House of the People from the constituencies specified in the corresponding entries in column 3 thereof, have been called in question by election petitions duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by the persons whose names and addresses are given in the corresponding entries in column 2 of the said Schedule;

Now, therefore, in exercise of the powers conferred by sections 86 and 88 of the said Act, the Election Commission hereby appoints Shri V. G. Oak, I.C.S., District Judge, Allahabad, to be the Chairman of each of the election tribunals so constituted for the trial of the said petitions and further appoints Allahabad as the place where the trial of the petitions shall be held.

SCHEDULE

Name of the person whose election has been called in question	Name and address of the persons by whom the election petition has been presented	Constituency
1	2	3
Shri Murli Manohar	Pandit Govind Malaviya, S/o Pandit Madan Mohan Malaviya, P.O. Lanka, Benares City.	Ballia District East.

1	2	3
Shri J.N. Wilson	Shri Shahker Tripathi S/o Shri Mahadeo Tripathi, Village Dhanapur, P.O. Gopigunj, District Banaras.	Mirzapur District cum Banaras West.

New Delhi, the 29th July, 1952

No. 19/86/51-Elec.III.—Whereas the election of Shri Chandreshwar Narain Prasad Singh of village Bhandari, Pargana Mahila, P.S. Belsand, District Muzaffarpur, as a member of the House of the People from the Muzaffarpur North-West constituency of that House, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Baijnath Prasad Varma of village Kamrauli, Sub-Division Sitamarhi, District Muzaffarpur;

Now, therefore, in pursuance of the provisions of sections 86 and 88 of the said Act, the Election Commission hereby appoints Shri Basu Prasad, Retired District Judge, Ranchi, to be the Chairman of the election tribunal for the trial of the said petition and further appoints Patna as the place where the trial of the petition shall be held.

No. 19/94/52-Elec.III.—Whereas the elections of the persons named in column 1 of the Schedule below, as members of the Legislative Assembly of the State of Bhopal from the constituencies specified in the corresponding entries in column 3 thereof, have been called in question by election petitions duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by the persons whose names and addresses are given in the corresponding entries in column 2 of the said Schedule;

Now, therefore, in exercise of the powers conferred by sections 86 and 88 of the said Act, the Election Commission hereby appoints—

- (1) Shri N. V. Sathave, Judicial Commissioner, Bhopal;
- (2) Shri W. Y. Radke, Additional Judicial Commissioner, Bhopal; and
- (3) Shri M. C. Nihalani, Advocate, Bhopal

as members of each of the election tribunals for the trial of the said petitions and further appoints Shri N. V. Sathave to be the Chairman of each of the tribunals so constituted and Bhopal as the place where the trial of the petitions shall be held.

SCHEDULE

Name of the person whose election has been called in question	Name and address of the person by whom the election petition has been presented	Constituency
1	2	3
Shri Sardarmal Lalwani	Pandit Sheo Narain Vaid, son of Pandit Munnala, Mohalla Itwara Gate, Bhopal	Huzur
Shri Narbada Charan Lal	Shri Bejaysingh son of Shri Harchand, Village Sankhera, Post Office Bhar Katch, Tehsil Bareilly Bhopal.	Amravadi

No. 19/267/52-Elec.III.—Whereas the elections of Shri J. P. Srivastava of 4/276 Nawabganj, Kanpur and Shri Sumat Prasad, Advocate, of Ward No. 3, Muzaffarnagar as members of the Council of States by the elected members of the Legislative Assembly of the State of Uttar Pradesh have been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Shibban Lal Saksena, son of B. Chhetey Lal, resident of House No. 18, Mohalla Allahabadpur in Gorakhpur City;

Now, therefore, in exercise of the powers conferred by sections 86 and 88 of the said Act, the Election Commission hereby appoints Shri W. Broome, I.C.S., District Judge, Lucknow, to be the Chairman of the Election Tribunal so constituted for the trial of the said petition, and further appoints Lucknow as the place where the trial of the petition shall be held.

No. 19/267/52-Elec.III(1).—Whereas the elections of Shri Bashir Hussain Zaidi of 16 Civil Lines, Ward No. 10, Mohalla No. 191, Civil Lines, Rampur, District Rampur and Shri Bulaqi Ram of House No. 479, Mohalla Saralthok, Ward No. 3, Hardoi, as members of the House of the People from the Hardoi District (North-West) cum Farrukhabad District (East) cum Shahjahanpur District (South) constituency of that House, have been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shrimati Shanta Devi Vaidya, wife of Shri Krishan Bihari Vaid of House No. 2, Hasanganj Sarai, Lucknow;

Now, therefore, in exercise of the powers conferred by sections 86 and 88 of the said Act, the Election Commission hereby appoints Shri W. Broome, I.C.S., District Judge, Lucknow, to be the Chairman of the Election Tribunal so constituted for trial of said petition, and further appoints Lucknow as the place where the trial of the petition shall be held.

P. S. SUBRAMANIAN,
Officer on Special Duty.